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**From:** Roewer, James [JRoewer@eei.org]  
**Sent:** 9/20/2018 7:34:06 PM  
**To:** Cook, Steven [cook.steven@epa.gov]; Breen, Barry [Breen.Barry@epa.gov]; Johnson, Barnes [Johnson.Barnes@epa.gov]  
**CC:** 'Doug Green' [dhgreen@venable.com]; 'HAROLD D. REGISTER JR <HAROLD.REGISTERJR@cmsenergy.com> (HAROLD.REGISTERJR@cmsenergy.com)'] [HAROLD.REGISTERJR@cmsenergy.com]  
**Subject:** Regulation of Inactive CCR Impoundments

Following up on our earlier conversations, I wanted to send a quick email reiterating the need for EPA to seek a delay of the DC Circuit's mandate with regard to "legacy impoundments" (i.e., inactive CCR surface impoundments located at inactive power plants). As we discussed, if the mandate issues vacating § 257.50(e) without any delay, these units will be thrown into immediate noncompliance with the rule, as nearly all compliance deadlines for CCR surface impoundments have passed. The only outstanding compliance deadlines are those related to location restriction demonstrations, which must be made by October 17, 2018 (less than one month from now). Based on information collected from USWAG members, we estimate that at least 49 units will be impacted by the court's ruling on this issue.

As we discussed, legacy impoundments should be given the same amount of time for meeting the various compliance deadlines that was available to existing CCR surface impoundments when the rule was promulgated in 2015. For example, CCR units were given 30 months from the rule's promulgation to install groundwater monitoring programs, as EPA correctly recognized that it would take time to enable owners/operators to install groundwater monitoring wells and generate background data necessary to establish a groundwater monitoring regime. As your staff acknowledged at our earlier meeting, this is consistent with the approach the Agency took—with approval by the DC Circuit—for bringing inactive CCR surface impoundments into compliance when the Agency agreed to vacate the exemption from regulation for those inactive impoundments that intended to close by April 2018.

Given that the mandate could issue as early as October 12 (which is 7 days after the deadline for filing petitions for rehearing), we believe that a motion to the Court asking for a delay of the vacatur of 257.50(e) should be filed as soon as possible to provide the Court adequate time to respond to the request *before* October 12 (including time for a possible response by Environmental Petitioners). We are available to provide you with any additional data it may need to support the motion.

Thank you for your attention to this important matter. Please let me know if you have any additional questions or would like to discuss further.

Jim